

EXHIBIT A

1 MORGAN, LEWIS & BOCKIUS LLP
 Daniel Johnson, Jr. (State Bar No. 57409)
 2 Brett Schuman (State Bar No. 189247)
 Amy M. Spicer (State Bar No. 188399)
 3 One Market, Spear Street Tower
 San Francisco, CA 94105-1126
 4 Tel: 415.442.1000
 Fax: 415.442.1001
 5 djjohnson@morganlewis.com
 bschuman@morganlewis.com
 6 aspicer@morganlewis.com

7 MORGAN, LEWIS & BOCKIUS LLP
 Andrew J. Wu (State Bar No. 214442)
 8 2 Palo Alto Square
 3000 El Camino Real, Suite 700
 9 Palo Alto, CA 94306-2122
 Tel: 650.843.4000
 10 Fax: 650.843.4001
 awu@morganlewis.com

11 Attorneys for Plaintiffs and
 12 Counterdefendants
 ALPHA & OMEGA SEMICONDUCTOR,
 13 INC.
 ALPHA & OMEGA SEMICONDUCTOR,
 14 LTD.

TOWNSEND AND TOWNSEND AND
 CREW LLP
 Eric P. Jacobs (State Bar No. 88413)
 Peter H. Goldsmith (State Bar No. 91294)
 Robert A. McFarlane (State Bar No. 172650)
 Igor Shoiket (State Bar No. 190066)
 Two Embarcadero Center, 8th Floor
 San Francisco, CA 94111
 Tel: 415.576.0200
 Fax: 415.576.0300
 epjacobs@townsend.com
 phgoldsmith@townsend.com
 ramcfarlane@townsend.com
 ishoiket@townsend.com

Attorneys for Defendant and
 Counterclaimant
 FAIRCHILD SEMICONDUCTOR CORP.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION
 18

19 ALPHA & OMEGA SEMICONDUCTOR,
 20 INC., a California corporation; and
 ALPHA & OMEGA SEMICONDUCTOR,
 21 LTD., a Bermuda corporation,

22 Plaintiffs and Counterdefendants,

23 v.

24 FAIRCHILD SEMICONDUCTOR
 CORP., a Delaware corporation,

25 Defendant and Counterclaimant.
 26

27 AND RELATED COUNTERCLAIMS
 28

Case No. C 07-2638 JSW
 (Consolidated with Case No. C-07-2664 JSW)

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT AND
 [PROPOSED] ORDER**

Pursuant to Civil L.R. 16-9(a) and Patent L.R. 2-1(a), plaintiffs and counterdefendants Alpha & Omega Semiconductor, Ltd. and Alpha & Omega Semiconductor, Inc. (collectively, "AOS") and defendant and counterclaimant Fairchild Semiconductor Corp. ("Fairchild") jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as the Case Management Order in this case. As described below, the Court consolidated this case for all purposes with *Fairchild Semiconductor Corp. v. Alpha & Omega Semiconductor, Inc., et al.*, Case No. 07-2664 JSW, and the parties request that all provisions of this Case Management Statement and Proposed Order apply to both cases.

I. Jurisdiction and Service

This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over the subject matter of this action, including Fairchild's counterclaims, pursuant to 28 U.S.C. §§ 1331 and 1338. The parties agree that venue is proper in this district and that the Court has personal jurisdiction over all current parties. There are no remaining parties to be served.

II. Description Of The Case and Disputed Factual Issues

This is a patent infringement action. The patents-in-suit relate to certain methods and designs for semiconductor technology. On May 17, 2007, AOS filed the above-captioned suit (the "AOS" action) for patent infringement and declaratory judgment against Fairchild seeking relief for Fairchild's alleged willful infringement of U.S. Patent No. 5,907,776 (the "'776 patent") and U.S. Patent No. 5,767,567 (the "'567 patent") (collectively, "the AOS patents-in-suit"). AOS also seeks declaratory judgment of alleged non-infringement of U.S. Patent No. 6,429,481 (the "'481 patent") and U.S. Patent No. 6,710,406 (the "'406 patent").

On May 18, 2007, Fairchild filed suit against AOS, *Fairchild Semiconductor Corp. v. Alpha & Omega Semiconductor, Inc., et al.*, Case No. 07-2664 (the "Fairchild" action). In its complaint, Fairchild seeks relief for AOS's alleged willful infringement of U.S. Patent No. 6,429,481 (the "'481 patent"), U.S. Patent No. 6,710,406 (the "'406 patent"), U.S. Patent No. 6,521,497 (the "'497 patent"), and U.S. Patent No. 6,828,195 (the "'195 patent") (collectively, "the Fairchild patents-in-suit").

1 Subsequently, Fairchild asserted six counterclaims in the *AOS* action. Fairchild's first and
2 second counterclaims seek declaratory judgment of alleged non-infringement and alleged
3 invalidity of the '776 and '567 patents – the two patents AOS asserted against Fairchild in the
4 *AOS* action. Fairchild additionally seeks relief for alleged willful infringement of the '481, '406,
5 '497, and '195 patents – the four patents Fairchild asserted against AOS in the *Fairchild* action.

6 This Court deemed the two cases to be related within the meaning of Civil Local Rule 3-
7 12 and the later-filed *Fairchild* action was reassigned to the Honorable Jeffrey S. White on June
8 15, 2007. Pursuant to the parties' stipulation, the Court thereafter consolidated the two actions
9 into the *AOS* action, Civil Action No. 07-2638, on July 31, 2007.

10 AOS asserts that Fairchild has directly, indirectly, contributorily and/or by inducement
11 infringed and continues to infringe the AOS patents-in-suit by its manufacture, use, sale,
12 importation and/or offer for sale of certain products that embody inventions claimed in the AOS
13 patents-in-suit. AOS alleges that this infringement is willful and deliberate. Fairchild denies
14 AOS's allegations, including that Fairchild infringes the '776 and '567 patents. Fairchild also
15 raises a number of affirmative defenses to AOS's claims, including that the '776 and '567 patents
16 are invalid.

17 Fairchild asserts that AOS has directly, indirectly, contributorily and/or by inducement
18 infringed and continues to infringe the Fairchild patents-in-suit by its manufacture, use, sale,
19 importation and/or offer for sale of certain products that embody inventions claimed in the
20 Fairchild patents-in-suit. Fairchild alleges that this infringement is willful and deliberate. AOS
21 denies Fairchild's allegations, including that AOS infringes the '481, '406, '497, and '195
22 patents. AOS also raises a number of affirmative defenses to Fairchild's counterclaims, including
23 that the '481, '406, '497, and '195 patents are invalid.

24 The principal factual issues in dispute are:

- 25 1. whether Fairchild has infringed and is infringing the AOS patents-in-suit;
- 26 2. whether Fairchild has contributed to the infringement by others of the AOS
- 27 patents-in-suit;
- 28 3. whether Fairchild has induced others to infringe the AOS patents-in-suit;

- 1 4. whether any such infringement by Fairchild is willful;
- 2 5. whether AOS's patents-in-suit are valid;
- 3 6. the amount of AOS's damages;
- 4 7. whether AOS has infringed and is infringing the Fairchild patents-in-suit;
- 5 8. whether AOS has contributed to the infringement by other of the Fairchild patents-
- 6 in-suit;
- 7 9. whether AOS has induced other to infringe the Fairchild patents-in-suit;
- 8 10. whether any such infringement by AOS is willful;
- 9 11. whether Fairchild's patents-in-suit are valid;
- 10 12. the amount of Fairchild's damages.

11 **III. Description Of the Legal Issues**

12 The principal disputed legal issues are:

- 13 1. the construction of the claims of the patents-in-suit;
- 14 2. the validity of the patents-in-suit;
- 15 3. whether any infringement was willful, and if so, the amount of enhanced damages;
- 16 4. whether an injunction (or injunctions) should issue if any of the patents-in-suit are
- 17 found valid, enforceable, and infringed.

18 **IV. Motions**

19 There are no pending motions. The parties anticipate filing motions for summary
20 judgment on the issues of infringement and/or invalidity.

21 **V. Amendment Of Pleadings**

22 AOS may seek to amend its complaint to allege infringement of additional patents.
23 Likewise, Fairchild may seek to amend its counterclaims to allege infringement of additional
24 patents. Neither party expects to add to or dismiss any of the current parties. The parties propose
25 a deadline of November 16, 2007, for the amendment of the pleadings with the right to seek leave
26 of the Court to amend the pleadings beyond that date.

27 **VI. Evidence Preservation**

28 AOS and Fairchild have taken steps, including the suspension of normal document

1 destruction programs and the institution of a litigation hold for both hardcopy documents and
2 electronic documents, to preserve evidence relevant to the issues reasonably evident in this action,
3 including interdiction of any document-destruction program and any ongoing erasure of e-mails,
4 voice mails, and other electronically-recorded material.

5 **VII. Disclosures**

6 The parties conducted a conference pursuant to Federal Rule of Civil Procedure 26(f) on
7 July 27, 2007. During that conference, the parties agreed that initial disclosures will be served no
8 later than August 10, 2007. The parties each reserve the right to supplement their disclosures as
9 discovery continues.

10 **VIII. Discovery**

11 The parties agree to the following discovery plan:

12 (a) Discovery Needed –

- 13 1. The alleged infringement of the asserted six patents
- 14 2. The alleged invalidity of the asserted six patents
- 15 3. The enforceability of the asserted six patents
- 16 4. The alleged damages resulting from the alleged infringement of each of the
17 asserted six patents
- 18 5. If any asserted patent is found valid and infringed, whether the
19 infringement was willful

20 (b) Bifurcation – The parties oppose bifurcation for discovery or trial.

21 (c) Interrogatories – The parties request that each party be allowed to serve a
22 maximum of 25 interrogatories.

23 (d) Depositions –

24 AOS's Position: In view of the fact that these consolidated cases involve six patents with
25 multiple inventors, AOS requests that each side be limited to 30 depositions lasting no more than
26 10 hours per witness, with the exception that depositions that require an interpreter shall last no
27 longer than 20 hours per witness.

28 Fairchild's Position: These consolidated cases involve the same six patents. The four

1 Fairchild patents-in-suit are related to the same parent patent application and share the same
2 named inventors. Consequently, Fairchild believes that 20 depositions per side is sufficient.
3 Fairchild requests that each deposition last no longer than seven hours per witness, with the
4 exception that depositions that require an interpreter should last no longer than fourteen hours per
5 witness.

6 (e) Requests for Admissions and for Documents – The parties agree that there should
7 be no limits on requests for admissions or document discovery requests.

8 (f) Foreign Deponents – The parties agree that each party shall produce for deposition
9 in the United States any foreign witness over which it has control.

10 (g) Representative Accused Products –

11 AOS's Position: Because this case is in its initial stages, AOS is not in a position to make
12 an informed decision regarding the viability of using only representative accused products or the
13 process by which the parties would select those products. AOS proposes that the parties discuss
14 this issue as discovery progresses.

15 Fairchild's Position: Fairchild proposes that the parties agree to select representative
16 accused products in order to reduce the amount of discovery and to reduce the length of trial.

17 **IX. Class Action**

18 This is not a class action.

19 **X. Related Cases**

20 Related cases C 07-2638 JSW and C 07-2664 JSW have been consolidated. The parties
21 are not aware of any other related cases pending before another judge of this Court or before
22 another court or administrative body.

23 **XI. Relief**

24 AOS seeks a declaration of non-infringement and invalidity of the '481 and '406 patents.
25 AOS also seeks judgment of infringement of the '776 and '567 patents. AOS requests entry of a
26 permanent injunction, an award of damages, including enhanced damages pursuant to 35 U.S.C.
27 § 284, a declaration that the case is exceptional within the meaning of 35 U.S.C. § 285 and an
28 award of attorney's fees and costs. AOS also seeks dismissal of all of Fairchild's counterclaims

1 asserting infringement of the '481, '406, '497, and '195 patents.

2 Fairchild seeks a declaration of non-infringement and invalidity of the '776 and '567
3 patents. Fairchild also seeks judgment of infringement of the '481, '406, '497, and '195 patents.
4 Fairchild requests entry of a permanent injunction, an award of damages, including enhanced
5 damages pursuant to 35 U.S.C. § 284, a declaration that the case is exceptional within the
6 meaning of 35 U.S.C. § 285 and an award of attorney's fees and costs.

7 **XII. Settlement and ADR**

8 The parties timely met and conferred pursuant to ADR Local Rule 3-5(a). During that
9 meeting, the parties agreed to participate in private mediation and filed a Stipulation and
10 [Proposed] Order Selecting ADR Process with the Court on July 27, 2007. The parties believe
11 that mediation should be scheduled after they have had an opportunity to engage in sufficient
12 discovery related to the (1) design, fabrication method, and structure of the accused products, and
13 (2) invalidity allegations to allow for meaningful settlement discussions. It may also be more
14 productive to conduct the mediation after the Court has issued its claim construction ruling.

15 **XIII. Consent To Magistrate Judge For All Purposes**

16 AOS's Position: AOS does not consent to the assignment of this case to a United States
17 Magistrate Judge.

18 Fairchild's Position: Fairchild would agree to assignment of this case to a United States
19 Magistrate Judge for jury trial subject to the approval of the parties.

20 **XIV. Other References**

21 The parties do not believe that this case is suitable for reference to binding arbitration, a
22 special master, or the Judicial Panel on Multidistrict Litigation.

23 AOS's Position: AOS requests that this Court handle all claims construction, pretrial and
24 trial issues.

25 Fairchild's Position: Fairchild would agree to having claims construction issues referred to
26 a special master if the Court would find that to be an efficient use of its time.

27 **XV. Narrowing Of The Issues**

28 The parties are not aware of any issues that can be narrowed by agreement or motion at

1 this time. The parties believe that discovery is not mature enough and trial is too remote at this
 2 time to determine issues that can be narrowed, suggestions to expedite the presentation of
 3 evidence at trial, or whether bifurcation of issues, claims or defenses is appropriate. The parties
 4 intend to address these issues as discovery proceeds and the issues become clearer.

5 **XVI. Expedited Schedule**

6 The parties at this time do not believe that this is the type of case that can be handled on
 7 an expedited basis with streamlined procedures.

8 **XVII. SCHEDULING**

9 The parties agree to the following schedule:

10 EVENT	PARTIES' PROPOSED DATES
11 Initial Disclosures	August 10, 2007
12 Initial Case Management Conference	August 17, 2007
13 Disclosure of Asserted Claims and Preliminary Infringement 14 Contentions (Patent L.R. 3-1)	August 31, 2007
15 Exchange of Documents Supporting Infringement Contentions 16 (Patent L.R. 3-2)	August 31, 2007
17 Disclosure of Preliminary Invalidity Contentions (Patent L.R. 3-3)	October 15, 2007
18 Exchange of Documents Supporting Invalidity Contentions 19 (Patent L.R. 3-4)	October 15, 2007
20 Simultaneous Exchange of Proposed Terms and Claim Elements 21 for Construction (Patent L.R. 4-1(a))	October 29, 2007
22 Meet and Confer re: Proposed Terms and Claim Elements for 23 Construction (Patent L.R. 4-1(b))	November 5, 2007
24 Last Day to Amend Complaint/Counterclaims	November 16, 2007
25 Simultaneous Exchange of Preliminary Claim Constructions (Patent L.R. 4-2(a))	November 19, 2007
26 Preliminary Exchange of Extrinsic Evidence (Patent L.R. 4-2(b))	November 19, 2007
27 Joint Claim Construction Statement Due (Patent L.R. 4-3)	December 14, 2007

1	Discovery on Claim Construction Closes (Patent L.R. 4-4)	January 14, 2007
2	Opening Claim Construction Brief(s) Due (Patent L.R. 4-5(a))	February 1, 2008
3	Opposition Claim Construction Brief(s) Due (Patent L.R. 4-5(b))	February 15, 2008
4	Reply Claim Construction Brief(s) Due (Patent L.R. 4-5(c))	February 22, 2008
5	Tutorial	March 5, 2008
6	Claim Construction Hearing	March 12, 2008
7	Fact Discovery Cut-off	Remainder of dates to be set during post-claim construction case management conference
8		
9	Disclosure of Identity of Liability Experts	
10	Written Expert Reports Due	
11	Rebuttal Expert Reports Due	
12	Expert Discovery Cut-off	
13	Deadline for Filing Dispositive Motions	
14	Pre-trial Conference	
15	Trial	

XVIII. Trial

Both parties have requested a jury trial and agree that trial will last three to four weeks.

XIX. Disclosure Of Non-Party Interested Entities Or Persons

The parties have each filed the required Certification of Interested Entities or Persons as required by Civil Local Rule 3-16.

AOS certifies that that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

1 ALPHA & OMEGA SEMICONDUCTOR (SHANGHAI) LIMITED

2 ALPHA & OMEGA SEMICONDUCTOR (HONG KONG) LIMITED

3 Fairchild certifies that that the following listed persons, associations of persons, firms,
4 partnerships, corporations (including parent corporations) or other entities (i) have a financial
5 interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-
6 financial interest in that subject matter or in a party that could be substantially affected by the
7 outcome of this proceeding:

8 FAIRCHILD SEMICONDUCTOR CORPORATION

9 **XX. Patent Related Issues Pursuant To Patent Local Rule 2-1(a)**

10 **A. Order of Presentation at the Claims Construction Hearing**

11 The parties propose that AOS will present first at the claims construction hearing with
12 respect to the construction of claims of the AOS patents-in-suit and that Fairchild will present
13 first at the claims construction hearing with respect to the construction of the claims of the
14 Fairchild patents-in-suit.

15 **B. Extrinsic Evidence and Live Testimony at the Claims Construction Hearing**

16 Currently, the parties do not anticipate presenting live testimony at the Claims
17 Construction Hearing. If these positions change during the course of discovery and briefing, the
18 parties will seek the Court's approval should they decide to present extrinsic evidence at the
19 hearing pursuant to the Court's Standing Order for Patent Cases ¶ 10.

20 **C. Need for Limits on Discovery Relating to Claims Construction**

21 The parties do not envision the need for any limits on discovery related to claims
22 construction, other than those provided by the Federal Rules or as provided by this Case
23 Management Order.

24 **D. Scheduling of a Claims Construction Prehearing Conference**

25 At this time, the parties do not anticipate the need for the scheduling of a Claim
26 Construction Prehearing Conference.

27
28

1 Dated: August 10, 2007

MORGAN, LEWIS & BOCKIUS LLP

2
3 By: /s/ Daniel Johnson, Jr.

4 Daniel Johnson, Jr.
5 Attorneys for Plaintiffs and
6 Counterdefendants
7 ALPHA & OMEGA SEMICONDUCTOR,
LTD., AND ALPHA & OMEGA
SEMICONDUCTOR, INC.

8 Dated: August 10, 2007

TOWNSEND AND TOWNSEND AND
CREW LLP

9
10 By: /s/ Eric P. Jacobs

11 Eric P. Jacobs
12 Attorneys for Defendant and
13 Counterclaimant
14 FAIRCHILD SEMICONDUCTOR
CORPORATION

15 **[PROPOSED] CASE MANAGEMENT ORDER**

16
17 The Case Management Statement and Proposed Order is hereby adopted by the Court as
18 the Case Management Order for the case. The parties shall comply with this Order.

19 **IT IS SO ORDERED.**

20 Dated:

21 HON. JEFFREY S. WHITE
22 UNITED STATES DISTRICT JUDGE

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Amy M. Spicer, attest that concurrence in the filing of this document has been obtained from counsel for plaintiffs, counterdefendants, counterclaimants, and defendants. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of August 2007, at San Francisco, California.

/s/ Amy M. Spicer

Amy M. Spicer

EXHIBIT B

TOWNSEND AND TOWNSEND AND CREW LLP
ERIC P. JACOBS (State Bar No. 88413)
PETER H. GOLDSMITH (State Bar No. 91294)
ROBERT A. McFARLANE (State Bar No. 172650)
IGOR SHOIKET (State Bar No. 190066)
Two Embarcadero Center, 8th Floor
San Francisco, California 94111
Telephone: (415) 576-0200
Facsimile: (415) 576-0300
E-mail: epjacobs@townsend.com
phgoldsmith@townsend.com
ramcfarlane@townsend.com
ishoiket@townsend.com

Attorneys for Defendant and Counterclaimant
FAIRCHILD SEMICONDUCTOR CORPORATION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALPHA & OMEGA SEMICONDUCTOR,
INC., a California corporation; and
ALPHA & OMEGA SEMICONDUCTOR,
LTD., a Bermuda corporation,

Plaintiffs and Counterdefendants,

v.

FAIRCHILD SEMICONDUCTOR
CORP., a Delaware corporation,
Defendant and Counterclaimant.

AND RELATED COUNTERCLAIMS.

Case No. C 07-2638 JSW (EDL)
(Consolidated with Case No. C 07-2664 JSW)

**FAIRCHILD SEMICONDUCTOR
CORPORATION'S NOTICE OF MOTION
AND MOTION TO COMPEL RESPONSES
TO INTERROGATORIES AND
PRODUCTION OF DOCUMENTS**

Date: December 11, 2007
Time: 9:00 a.m.
Courtroom: Courtroom E, 15th Floor

Hon. Elizabeth D. Laporte

1 TO PLAINTIFFS AND COUNTERDEFENDANTS ALPHA & OMEGA
2 SEMICONDUCTOR, INC., AND ALPHA & OMEGA SEMICONDUCTOR, LTD.:

3 PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 37(a)(2)(B) and
4 Northern District of California Civil L.R. 7-1, 7-2, and 37-2, Defendant and Counterclaimant Fairchild
5 Semiconductor Corporation ("Fairchild") hereby moves the Court for an Order To Compel Responses
6 To Interrogatories And Production Of Documents. Specifically, Fairchild moves this Court to order
7 Plaintiffs and Counterdefendants Alpha & Omega Semiconductor, Inc., and Alpha & Omega
8 Semiconductor, Ltd. (collectively, "AOS") to provide full and complete discovery responses regarding
9 all AOS trench power MOSFET products accused of infringement in this case.

10 This motion will be heard in Courtroom E, 15th Floor, of the Northern District of California,
11 San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California, on December
12 11, 2007, at 9:00 AM, or as soon thereafter as counsel may be heard, or at such other date and time as
13 the Court orders *sua sponte* or pursuant to the Motion to Change Time To Consolidate The Hearing
14 Dates On Discovery Motions, filed concurrently herewith. This motion is based on this notice and
15 memorandum, the attached declarations and exhibits, the oral argument to be heard at the hearing on
16 this motion, and any and all papers on file in this proceeding.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 Fairchild filed its complaint for patent infringement against AOS on May 18, 2007. In its
20 Disclosure of Asserted Claims and Preliminary Infringement Contentions ("PICs"), Fairchild
21 specifically identified 342 AOS power MOSFET¹ products as infringing Fairchild's asserted patents.
22 AOS seeks to limit its discovery obligations in this case to eighteen AOS products, including fourteen
23 _____

24 ¹ A "MOSFET" is a Metal Oxide Semiconductor Field Effect Transistor. It is a semiconductor device
25 that is used to switch current on and off. An "IGBT" is an Insulated Gate Bipolar Transistor. It is
26 similar to a MOSFET in respects that are material to the Fairchild patents-in-suit. Based on
27 information available to Fairchild from AOS's website at the time of service of Fairchild's PICs, it
28 appears that AOS does not manufacture or sell trench IGBT products at this time. To the extent AOS
does manufacture any trench IGBT products, Fairchild believes that such products also practice the
asserted claims of Fairchild's patents and are included in Fairchild's discovery requests.

1 AOS products for which Fairchild provided claim charts and reverse-engineering analysis in its PICs,
2 as well as four additional AOS products that are identified in a letter dated August 3, 2005, from
3 Fairchild's Director of Patents to AOS's Chief Executive Officer. AOS's ostensible justification for
4 unilaterally limiting its discovery obligations is its assertion that Fairchild's definition of "accused
5 product(s)" in its discovery requests is so broad as to "encompass every electronic system device used
6 by either AOS or its customers including, e.g., telephones and automobiles." AOS had previously
7 taken the untenable position that its discovery obligations were limited to eight products listed in the
8 August 3, 2005 letter, on the basis that Fairchild's PICs are "legally insufficient to identify more than
9 the products identified by Fairchild in its August 3, 2005 letter." (Declaration of Igor Shoiket In
10 Support Of Fairchild's Motion To Compel Responses To Interrogatories And Production Of
11 Documents, ("Shoiket Decl."), Exh. 6). The day Fairchild filed the present motion, AOS abandoned
12 this indefensible position in a letter from AOS's counsel to Fairchild's counsel. (Shoiket Decl., Exh.
13 7). Nonetheless, AOS still refuses to produce discovery on the other 324 products identified in
14 Fairchild's PICs.

15 AOS's arguments are legally unsupported and factually incorrect. Fairchild has accused all of
16 AOS's trench power MOSFET and IGBT products, whether sold by themselves or in modules with
17 other electronic devices, and provided PICs explaining how the asserted claims of the Fairchild
18 patents read on the accused products. AOS's attempts to limit its discovery obligations to a small
19 subset of those products should be rejected, and AOS should be ordered to produce discovery on all of
20 its accused trench power MOSFET and IGBT products.

21 Fairchild's counsel met-and-conferred in good faith with opposing counsel as required by Rule
22 37 of the Federal Rules of Civil Procedure, Civil Local Rule 37-1(a), and the Court's Order regarding
23 Discovery Procedures in an effort to resolve this dispute without Court intervention. (Shoiket Decl.,
24 ¶¶ 7-9, and exhibits attached thereto).

25 **II. BACKGROUND**

26 Fairchild served its First Set Of Interrogatories To Alpha And Omega Semiconductor Limited
27 and its First Set Of Requests For Production Of Documents To Alpha And Omega Semiconductor
28 Incorporated and Alpha And Omega Semiconductor Limited on July 27, 2007. (Shoiket Decl., Exhs.

1 1 and 2). The first set of interrogatories and the first set of requests for production both include the
2 following definition of "accused product(s)":

3 3. The term "accused product(s)" refers to any and all systems of
4 products, including but not limited to modules, containing trench design
5 power MOSFETs or IGBTs made, used, offered for sale, sold, or
imported into the United States by you, on your behalf, or by any of
your customers."

6 (Shoiket Decl., Exh. 1 at 2, Exh. 2 at 2). Fairchild's first set of interrogatories and its first set of
7 requests for production both include a number of discovery requests directed towards information
8 regarding the design, manufacture, testing, operation, structure and function of AOS's "accused
9 product(s)." (Shoiket Decl., Exh. 1 at 4-6, Exh. 2 at 5-7). In particular, interrogatories 1-5 and 8-12,
10 and requests for production 1-10 and 14-21, all reference AOS's "accused product(s)." (Shoiket Decl.,
11 Exh. 1 at 4-6, Exh. 2 at 5-7).

12 AOS served its responses and objections to these requests on September 28, 2007. (Shoiket
13 Decl., Exhs. 3 and 4). AOS interposed the following objection to Fairchild's definition of "accused
14 product(s)" in the "General Objections" section:

15 4. AOS objects to Fairchild's definition of "accused product(s)" as
16 overly broad. As Fairchild has defined the term, it purports to
17 encompass *each and every trench MOSFET product* that AOS has ever
18 made, used, offered for sale, sold or imported. AOS will treat this term
as referring to the following trench MOSFET products that were
identified by Fairchild in a letter dated August 3, 2005, from Stephen
Schott to Dr. Michael Chang: AO4812, AO4912, AOD412, AOD414,
AOD404, AOD406, AO4407, and AO4422.

19 (Shoiket Decl., Exh. 3 at 3, Exh. 4 at 3) (emphasis added). AOS incorporated its general objection to
20 Fairchild's definition of "accused product(s)" throughout its responses, refusing to provide any
21 information in its interrogatory responses, or to produce any documents, relating to products other
22 than the eight products specifically referenced in AOS's objection to the definition of "accused
23 product(s)." (Shoiket Decl., Exh. 3 at 3-8, Exh. 4 at 3-10). Thus, AOS has limited the scope of its
24 discovery obligations in this case to those eight products.

25 In a letter from AOS's counsel to Fairchild's counsel dated October 25, 2007, AOS again stated
26 that it is limiting the scope of "accused products" as that term is used in Fairchild's discovery requests
27 to the eight products identified in the August 3, 2005 letter. (Shoiket Decl., Exh. 6 at 2). In the
28

1 October 25 letter, AOS's counsel asserted that its objection to Fairchild's definition of "accused
2 product(s)" is related to its objection to the sufficiency of Fairchild's PICs. (Id.). Specifically, AOS's
3 counsel stated that "[t]he PICs served by Fairchild fail to provide any guidance as to what products are
4 at issue in this case. Fairchild's PICs, as with its definition of accused products, purport to cover an
5 indiscriminate array of AOS's MOSFET products." (Id.). AOS also stated that "Fairchild's PICs are
6 legally insufficient to identify more than the products identified by Fairchild in its August 3, 2005
7 letter." (Id.).

8 The October 25 letter explicitly tied AOS's refusal to provide discovery on anything but eight
9 of its power MOSFET products (out of approximately 342 accused power MOSFET products) to
10 purported deficiencies in Fairchild's PICs. (Shoiket Decl., Exh. 6 at 2). However, as explained in
11 Fairchild's opposition to AOS's motion to strike Fairchild PICs, filed concurrently herewith,
12 Fairchild's PICs clearly and unambiguously identified the accused products and provided results of
13 reverse engineering analyses that shows how the asserted claims of Fairchild's patents read on the
14 accused products. (Fairchild's PICs are attached to the Declaration Of Brett M. Schuman In Support
15 Of AOS's Motion To Strike Fairchild's Patent Local Rule 3.1, ("Schuman Decl."), Exh. A). Moreover,
16 discovery is not limited by the patentholder's PICs. See *Epicrealm, Licensing, LLC v. Autoflex*
17 *Leasing, Inc.*, 2007 WL 2580969 (E.D.Texas, Aug. 27, 2007) (construing Eastern District of Texas
18 patent local rules which are substantively the same as the Northern District of California's patent local
19 rules).

20 In its PICs, which were served on August 31, 2007, Fairchild explicitly accused 342 of AOS's
21 power MOSFET products listed in Exhibit 1 to the PICs of infringing various claims of U.S. Patent
22 Nos. 6,429,481 ("the '481 Patent"), 6,521,497 ("the '497 Patent"), 6,710,406 ("the '406 Patent"), and
23 6,828,195 ("the '195 Patent"). (Schuman Decl., Exh. A). Exhibit 1 to the PICs, which is entitled
24 "MOSFET Selector Guide – All Products" ("the MOSFET Selector Guide"), lists all 342 of AOS's
25 trench power MOSFETs that were available at the time of the service of the PICs, and which are
26 accused of infringing the Fairchild patents. (Id.) The MOSFET Selector Guide provides detailed
27 information about each of those 342 products, such as its configuration (e.g., single, dual,
28 complementary), its type (e.g., p-channel, n-channel), its drain-source voltage (V_{DS}), and numerous

1 other parameters. (Id.)

2 Fairchild's PICs also contain detailed claim charts, supported by reverse-engineering analyses,
3 for the 14 AOS trench power MOSFET products analyzed by Fairchild as part of its pre-filing
4 investigation. (Schuman Decl., Exh. A). These 14 parts are included in the list of 342 AOS power
5 MOSFETs provided in the MOSFET Selector Guide. (Id.) With regard to these 14 parts, Fairchild
6 stated:

7 These claim charts are based on information available to Fairchild at this
8 time and are based, in part, upon reverse engineering of a reasonable
9 sampling of AOS products. Fairchild contends that each of the accused
10 AOS products meets the limitations of the asserted claims because,
11 based upon their published characteristics, they are likely to have the
12 same design and structure as the products for which reverse engineering
13 data is provided. In addition, each of the accused AOS products is
14 likely to have been manufactured using a process that is the same or
15 similar in all respects relevant to the asserted claims as the products for
16 which reverse engineering data is provided.

17 (Id.)

18 The August 3, 2005, letter referenced in AOS's general objections to Fairchild's discovery
19 requests was written by Stephen Schott, Director of Patents and Associate General Counsel at
20 Fairchild, to Dr. Michael Chang, the CEO of AOS, as part of the parties' licensing negotiations in
21 2005. (Shoiket Decl., Exh. 8). The letter described prior communications between several senior
22 employees at Fairchild and Dr. Chang regarding the possibility of AOS taking a license to four of the
23 Fairchild patents that are at issue in this litigation. (Id.) In addition to identifying eight AOS
24 products, the letter also stated that Fairchild believed that a wide range of additional AOS products are
25 covered by these Fairchild patents. (Id. at 1). Fairchild's accusation of infringement cannot be limited
26 to a few products identified by Fairchild in licensing negotiations that took place two years before this
27 action was filed.

28 In a letter from AOS's counsel to Fairchild's counsel dated November 6, 2007, AOS abandoned
its position that it would product discovery on only the eight AOS products listed in the August 3,
2005 letter. (Shoiket Decl., Exh. 7). In that letter, AOS repeated its position that the definition of

"accused product(s)" in Fairchild's discovery requests is overly broad.² (Id.) AOS also recognized, however, that Fairchild's PICs identify ten additional AOS products that were not previously identified in pre-litigation correspondence.³ (Id.) AOS stated that it will produce discovery on these additional ten AOS products, in addition to the eight AOS products listed in the August 3, 2005 letter. (Id.) AOS still refuses, however, to produce discovery on the remaining 324 products explicitly identified in Fairchild's PICs. (Id.)

III. ARGUMENT

A. Fairchild's Definition Of "Accused Product(s)" Is Not Overly Broad

AOS objects to Fairchild's definition of "accused product(s)" as being overly broad, arguing that the definition "purports to encompass each and every trench MOSFET product that AOS has ever made, used, offered for sale, sold or imported." (Shoiket Decl., Exh. 3 at 3, Exh. 4 at 3). AOS also argues that Fairchild's definition of this phrase is "so vague and overly broad that it fails to put AOS on fair notice of the products that Fairchild suspects are infringing its patents." (Shoiket Decl., Exh. 6 at 2). AOS provides no explanation, however, as to why seeking discovery on AOS's entire trench power MOSFET product line is overly broad. If all of AOS's trench MOSFET products infringe Fairchild's patents, as Fairchild believes they do, then Fairchild is entitled to discovery on all those products.

² AOS also stated in the November 6, 2005, letter that Fairchild's PICs for the '111 and '947 Patents, which were served on October 29, include a narrower identification of accused products than is provided in the PICs for the '481, '497, '406, and '195 Patents. The reason why the PICs for the '111 and '947 Patents includes a narrower identification of products is because Fairchild believes that only a subset, and not all, of AOS's trench MOSFET products infringe those patents. Fairchild believes that all of AOS's trench MOSFET products infringe the '481, '497, '406, and '195 Patents. Therefore, Fairchild cannot agree to limit the number AOS trench MOSFET products accused of infringing the '481, '497, '406, and '195 Patents, as it has done for the '111 and '947 Patents.

³ The August 3, 2005, letter listed AO4812, AO4912, AOD412, AOD414, AOD404, AOD406, AO4407, and AO4422 as being covered by Fairchild's patents. Fairchild's PICs include reverse-engineering analysis for fourteen AOS products, specifically AO4410, AO4413A, AO4422, AO4468, AO4704, AO4812, AO4914, AO6402, AO6405, AOD414, AOL1412, AO4912, AOD438, and AOL1414. Thus, Fairchild's PICs provide reverse-engineering analysis for four of the AOS products that were identified in the August 3, 2005 letter. Ten of the AOS products for which reverse-engineering analysis is provided in the PICs were not listed in the August 3, 2005 letter.

1 The scope of discovery in all federal court litigation, including patent cases, is set forth in
2 Federal Rule of Civil Procedure 26(b)(1), which provides that:

3 Parties may obtain discovery regarding *any matter, not privileged, that*
4 *is relevant to the claim or defense of any party*, including the existence,
5 description, nature, custody, condition, and location of any books,
6 documents, or other tangible things and the identity and location of
7 persons having knowledge of any discoverable matter. For good cause,
8 the court may order discovery of any matter relevant to the subject
9 matter involved in the action. Relevant information need not be
10 admissible at the trial if the discovery appears reasonably calculated to
11 lead to the discovery of admissible evidence. All discovery is subject to
12 the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

13 (Emphasis added). Fairchild's discovery requests relating to AOS's "accused product(s)" are relevant
14 to Fairchild's claims of patent infringement and reasonably calculated to lead to the discovery of
15 admissible evidence. As clearly stated in the PICs and reflected in the corresponding definitions of
16 "accused product(s)" in Fairchild's discovery requests, Fairchild has accused AOS's entire line of
17 power MOSFETs of infringing Fairchild's '481, '497, '406, and '195 Patents. (Schuman Decl., Exh. A;
18 Shoiket Decl., Exh. 1 at 2, Exh. 2 at 2). Fairchild's infringement assertions are based upon a detailed
19 pre-filing investigation of the design and process of manufacture of a reasonable sample of fourteen of
20 AOS's power MOSFETs, as reflected in the reverse-engineering results of AOS's products supporting
21 Fairchild's PICs.⁴ (AOS has never complained about the sufficiency of the PICs as they relate to the
22 fourteen products, yet AOS even refuses to provide discovery on some of *those* products.) AOS has
23 no basis for limiting its discovery obligations to some artificially narrow subset of the accused
24 products of its own choosing.

25 Fairchild has on several occasions offered to enter into an agreement that would limit
26 discovery and trial to a set of accused products that are representative of other products. *See, e.g.,*
27 Joint Case Management Conference Statement (Docket No. 28) at p. 6. Such an agreement is
28 typically entered into in semiconductor patent litigation as a means of reducing discovery costs and

⁴ A Declaration of Dr. Richard A. Blanchard accompanies Fairchild's opposition to AOS's motion to strike Fairchild's PICs. In his declaration, Dr. Blanchard, who is a noted semiconductor expert, explains why it is reasonable to assume that *all* of AOS's power MOSFETs have a similar design and are made by a similar process as those products for which reverse engineering was performed.

1 trial time. Such agreements make sense because many semiconductor products are of similar design
2 and manufacture. AOS has refused to enter into such an agreement. Consequently, any argument by
3 AOS that Fairchild's discovery requests are overbroad is disingenuous.

4 **B. Fairchild's Preliminary Infringement Contentions Do Not Limit The Scope Of**
5 **Discovery In This Litigation**

6 After first arguing that the definition of "accused product(s)" is overly broad, AOS then argues
7 that Fairchild's PICs do not provide any clarification as to what products are being accused of
8 infringement. (Shoiket Decl., Exh. 6 at 2). AOS's argument is wrong for two reasons. First, in its
9 PICs Fairchild clearly identified by part number every AOS product accused of infringement as of the
10 date the PICs were served. (Schuman Decl., Exh. A). Second, the PICs themselves do not serve to
11 limit the scope of discovery. The scope of discovery is set forth in Federal Rule of Civil Procedure
12 26(b). The Northern District of California's Patent Local Rules do not introduce any limits on the
13 scope of discovery beyond what are set forth in the Federal Rules of Civil Procedure. In particular,
14 the portions of the Patent Local Rules dealing with Preliminary Infringement Contentions do not state
15 in any way that the PICs are intended to limit the scope of discovery.

16 While Fairchild could not find a decision from the Northern District of California that
17 specifically addressed the effect of the PICs on the scope of discovery, other jurisdictions have issued
18 such decisions. In particular, the Eastern District of Texas, which has adopted patent local rules that
19 model those adopted by the Northern District of California, has held that the scope of discovery in a
20 patent case is not limited by the PICs. In *Epicrealm, Licensing, LLC v. Autoflex Leasing, Inc.*, 2007
21 WL 2580969 (E.D. Texas, Aug. 27, 2007), the District Court for the Eastern District of Texas
22 addressed the issue of "whether the scope of discovery should be strictly limited to the products and
23 services specifically identified in the patent holder's PICs." *Id.* at *2. The court held that:

24 ... the Court finds no bright line rule that discovery can only be obtained
25 if related to an accused product identified in a party's PICs. For
26 example, the Dallas Division of the Northern District of Texas has
27 adopted local rules for patent cases directing that "the scope of
28 discovery is not limited to the preliminary infringement contentions or
preliminary invalidity contentions but is governed by the Federal Rules
of Civil Procedure." § 2-5, Miscellaneous Order No. 62 (Apr. 2, 2007).
The Court infers that this Dallas Division local rule intends that the
scope of discovery is determined on a case-by-case basis and as
contemplated by the "relevant to the claim or defense of any party"
language in Federal Rule of Civil Procedure 26(b)(1). Further, Judge

1 Ward of the Eastern District of Texas has found that relevant discovery
2 in a patent infringement suit "includes discovery relating to the technical
3 operation of the accused products, as well as the identity of and
4 technical operation of any products reasonably similar to any accused
5 product." *See, e.g., Microunity Sys. Eng'g, Inc. v. Advanced Micro*
6 *Devices, Inc.*, 2-06-cv-486, Dkt. No. 38 at ¶ 3 (E.D.Tex. May 23, 2007).

7 The Court concludes that the scope of discovery may include products
8 and services (in this case, websites and systems) "reasonably similar" to
9 those accused in the PICs. *Id.* This finding best comports with the
10 "notice pleading and broad discovery regime created by the Federal
11 Rules" and the "right to develop new information in discovery." *O2*
12 *Micro Int'l, Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366
13 (Fed. Cir. 2006).

14 *Id.* at *3. Thus, the Eastern District of Texas, whose local patent rules closely follow those of the
15 Northern District of California, has expressly rejected the argument that discovery is limited to the
16 specific products listed in a plaintiff's PICs. *Id.*

17 **C. AOS Has No Justification For Limiting The Scope Of Discovery To The Eighteen
18 AOS Products Listed In The November 6, 2007, Letter**

19 There is simply no justification for limiting AOS's discovery obligations to the eighteen AOS
20 products identified in the November 6, 2007, letter. The Northern District of California has at least
21 implicitly stated that all the products disclosed in a plaintiff's PICs, and not some subset of those
22 products, are within the scope of discovery. In *IXYS Corp. v. Advanced Power Technology, Inc.*, 2004
23 WL 1368860 (N.D.Cal. June 16, 2004), the plaintiff's PICs accused the following products:

24 (a) any and all Power MOS 7® products or Power MOS V®
25 (Generation 5) products with dual-layer metallization manufactured,
26 used, sold, or offered for sale by APT on or after August 15, 1996, and

27 (b) any and all products manufactured, used, sold, or offered for sale by
28 APT on or after August 15, 1996 *that are designed in substantially the*
same way, or function in substantially the same way, as APT 5018BLL
[a Power MOS 70 MOSFET].

29 *Id.* at *3 (quoting Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions)
30 (emphasis added). With regard to the defendant's discovery obligations under Patent Local Rule 3-
31 4(a), the court stated that "[b]y consequence [of the plaintiff having accused these products in its
32 PICs], it is documents describing *those* devices that APT was obligated to produce" *Id.* Thus, the
33 scope of discovery in the IXYS case covered two *families of products* having a particular feature (i.e.,
34 all "Power MOS 7® products" and all of the "Power MOS V® (Generation 5) products" having dual-

1 layer metallization), as well as all products that were *designed in substantially the same way* or that
2 *functioned in substantially the same way* as a particular product (the "APT 5018BLL power
3 MOSFET"). In other words, the scope of discovery included every accused product that was listed in
4 the PICs, not even excluding other family members that were not listed specifically by name, and not
5 excluding products that had similar characteristics to the specifically enumerated products.

6 In this case, Fairchild has explicitly accused 342 of AOS's power MOSFET products of
7 infringing Fairchild's patents. (Schuman Decl., Exh. A). Fairchild's PICs could not be any clearer in
8 identifying the products that are accused of infringement.

9 **IV. CONCLUSION**

10 For these reasons, Fairchild respectfully requests that the court compel AOS to supplement its
11 discovery responses to include information related to all of its systems of products, including but not
12 limited to modules, containing trench design power MOSFETs or IGBTs made, used, offered for sale,
13 sold, or imported into the United States on its behalf, or by any of its customers, as originally
14 requested by Fairchild, within fourteen days of the issuance of the Court's Order.

15
16 DATED: November 6, 2007

TOWNSEND AND TOWNSEND AND CREW LLP

17
18 By: /s/Igor Shoiket
19 IGOR SHOIKET

20 Attorneys for Defendant and Counterclaimant.
21 FAIRCHILD SEMICONDUCTOR CORPORATION

22 61200149 v5
23
24
25
26
27
28

EXHIBIT C

TOWNSEND AND TOWNSEND AND CREW LLP
ERIC P. JACOBS (State Bar No. 88413)
PETER H. GOLDSMITH (State Bar No. 91294)
ROBERT A. McFARLANE (State Bar No. 172650)
IGOR SHOIKET (State Bar No. 190066)
Two Embarcadero Center, 8th Floor
San Francisco, California 94111
Telephone: (415) 576-0200
Facsimile: (415) 576-0300
E-mail: epjacobs@townsend.com
phgoldsmith@townsend.com
ramcfarlane@townsend.com
ishoiket@townsend.com

Attorneys for Defendant and Counterclaimant
FAIRCHILD SEMICONDUCTOR CORPORATION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALPHA & OMEGA SEMICONDUCTOR,
INC., a California corporation; and
ALPHA & OMEGA SEMICONDUCTOR,
LTD., a Bermuda corporation,

Plaintiffs and Counterdefendants,

v.

FAIRCHILD SEMICONDUCTOR
CORP., a Delaware corporation,
Defendant and Counterclaimant.

AND RELATED COUNTERCLAIMS.

Case No. C 07-2638 JSW (EDL)
(Consolidated with Case No. C 07-2664 JSW)

**FAIRCHILD SEMICONDUCTOR
CORPORATION'S REPLY BRIEF IN
SUPPORT OF ITS MOTION TO COMPEL
RESPONSES TO INTERROGATORIES AND
PRODUCTION OF DOCUMENTS**

Date: December 11, 2007
Time: 9:00 a.m.
Courtroom: Courtroom E, 15th Floor

Hon. Elizabeth D. Laporte

1 **I. INTRODUCTION**

2 Fairchild has moved this Court to compel AOS to produce discovery relating to all 342 AOS
3 products that Fairchild has accused of infringement in this litigation. AOS argues in its opposition to
4 that motion that "[t]o justify its discovery requests, Fairchild relies exclusively on its Patent L.R. 3-1
5 Disclosures ("PICs") ..." AOS then argues that:

6 Fairchild's approach fails for at least two reasons. First, as AOS has
7 demonstrated, Fairchild's PICs do not comply with Patent Local Rule 3-
8 1. ... Second, even if the Court were to accept that Fairchild's PICs are
9 sufficient to accuse AOS's entire product line, it does not necessarily
10 follow that Fairchild is entitled to the discovery it seeks by way of this
11 motion.

12 AOS's first argument was rejected by this Court on November 27, 2007, when the Court denied
13 AOS's motion to strike Fairchild's PICs. AOS's second argument is equally flawed. In support of its
14 second argument, AOS argues that:

15 Different legal standards govern the evaluation of Fairchild's PICs, i.e.,
16 Patent Local Rule 3-1, and Fairchild's motion to compel AOS to
17 produce all information it has requested in relation to all of AOS's
18 trench MOSFETs. Because Fairchild has not demonstrated that it is
19 entitled to the relief it seeks by way of its motion to compel, the motion
20 should be denied regardless of whether Fairchild's PICs are accepted or
21 rejected by this Court.

22 For the reasons provided below, Fairchild has demonstrated that it is entitled to discovery on all 342 of
23 AOS's trench MOSFET products, based on Fairchild's reasonable belief that all 342 accused AOS
24 products infringe the asserted claims of the Fairchild patents.

25 **II. ARGUMENT**

26 **A. Discovery On All 342 Accused AOS Products Is Necessary To Determine**
27 **Infringement**

28 AOS argues that its trench MOSFET products differ in ways that are materially relevant to
Fairchild's infringement claims. First, AOS states that AOS's products are used in many different
applications. Then, AOS states that to succeed in these different applications, AOS's products must
have different performance characteristics. Next, AOS states that to achieve these different
performance characteristics, AOS's products must have different features. Finally, AOS states that
"[w]hile not all of the features are different as to every product, there are certainly some differences
between each of the products." Furthermore, AOS asserts that "these differences are relevant to

1 Fairchild's claims." Despite these broad claims, however, AOS lists only the following two purported
2 material differences among its trench MOSFET products:

- 3 • the depth of the doped well relative to the depth of the trench;
4 and
- 5 • the drain-source voltage (V_{DS}).

6 These are the only two examples provided by AOS as to how its products differ materially from one to
7 the next.

8 AOS has failed in its opposition to Fairchild's motion to compel to show that Fairchild's
9 discovery requests are not "relevant to the claim or defense of any party," which is the permissible
10 scope of discovery enunciated in Fed. Rule Civ. P. 26(b). AOS's contention that its trench MOSFET
11 products differ in some respects does not mean that those differences are relevant to all of the
12 infringement issues. For example, the depth of the doped well relative to the depth of the trench is not
13 recited in most of the asserted claims of Fairchild's patents. Claims 6, 7, 8, 10, 15, 16, 17, 18, 21, and
14 22 of the '481 patent; all of the asserted claims of the '497 patent; and claims 13, 14, 15, 17, 24, 25, 26,
15 27, 28, 29, 30, 31, and 32 of the '406 patent make no mention whatsoever of the depth of the doped
16 well relative to the depth of the trench. Similarly, the drain-source voltage is not recited in the vast
17 majority of the asserted claims.

18 AOS has not established in its opposition to this motion that its products are made using
19 different processes that result in differences that are material to the infringement analysis for all the
20 claims of Fairchild's asserted patents. By refusing to produce discovery on anything but the 14
21 products specifically identified in Fairchild's PICs, AOS is denying Fairchild information that is
22 reasonably calculated to lead to discovery of admissible evidence and is critical to proving Fairchild's
23 infringement case against AOS trench MOSFET product line.

24 Moreover, AOS's grumbling that it is being asked to provide discovery on too many products
25 is baseless. Fairchild has for several months sought to arrive at an agreement whereby the parties can
26 provide discovery on representative parts, but AOS thus far has refused to enter into such an
27 agreement. If AOS believes that a category of products is so materially different from the asserted
28 patent claims that it cannot possibly infringe, AOS can use the representative parts approach. In

1 particular, AOS can identify a product or products that it believes cannot possibly infringe, it can
2 produce discovery relating to that product or products, and it can identify any other products that it
3 believes incorporate the same allegedly non-infringing structure or are manufactured using the same
4 allegedly non-infringing process. Such use of representative parts is a reasonable and commonly-
5 followed approach to reduce the burden of discovery in semiconductor cases and to reduce trial time.
6 AOS's improper attempt to limit the scope of discovery must be rejected.

7 **B. Fairchild's Has Carried Its Burden Of Demonstrating Its Right To The Discovery It**
8 **Seeks**

9 AOS argues that:

10 Beyond the definitional overbreadth of Fairchild's requests, the scope
11 and magnitude of the discovery sought by Fairchild is unduly
12 burdensome. *Fairchild seeks fulsome discovery regarding AOS's*
13 *entire trench MOSFET product line, some 342 different products.* In
14 seeking information about all of AOS's products, Fairchild is essentially
15 asking for every document that AOS has ever generated in the ordinary
16 course of business. (emphasis added)

17 First, Fairchild is not asking for "every document that AOS has ever generated in the ordinary course
18 of business," but only for documents reasonably calculated to lead to discovery of admissible evidence
19 on the issue of infringement, albeit for all 342 accused parts, unless the parties can reach agreement on
20 the issue of representative parts as was proposed by Fairchild. Second, AOS's argument above is
21 defeated by AOS's own arguments in opposition to Fairchild's Motion to compel. There, AOS argued
22 that:

23 Fairchild offers no reason why the size of its own power MOSFET-
24 based product lines should render discovery regarding those lines
25 overbroad when any product within those lines could potentially
26 infringe one or more of AOS's asserted patents.

27 AOS makes the point for Fairchild. Fairchild has not only identified every single product that it has
28 accused of infringement, but it has also explained why it believes the products for which it did not

25 ¹ This argument lacks force when applied to Fairchild's objections to AOS's discovery requests,
26 because AOS has failed to provide any explanation whatsoever as to why any of Fairchild's products
27 other than those specifically listed in AOS's PICs could possibly infringe AOS's patents, or what it
28 means by a "corresponding design." Therefore, AOS has failed to show why the discovery it seeks in
its motion to compel are relevant to this litigation.

1 provide reverse-engineering analysis also infringe Fairchild's asserted patents. Fairchild has
2 demonstrated its reasonable belief that all of AOS's trench MOSFET products infringe Fairchild's
3 asserted patents -- a showing that AOS has utterly failed to make in its own PICs.

4 AOS also argues that Fairchild cannot rely on a declaration from it's retained expert witness,
5 Dr. Blanchard, because AOS has objected to Dr. Blanchard's involvement in the case on behalf of
6 Fairchild and has filed a related motion for a protective order. AOS's argument that Fairchild cannot
7 rely on Dr. Blanchard to support its infringement contentions is without merit, because such an order
8 even if granted would only preclude Dr. Blanchard from viewing AOS's "Confidential" and "Highly
9 Confidential -- Attorneys' Eyes Only" information. Dr. Blanchard has relied entirely upon (1)
10 Fairchild's own reverse-engineering analyses and (2) publicly available AOS product information.
11 Since Dr. Blanchard has not relied on any confidential information -- indeed, Dr. Blanchard has not
12 yet seen any confidential AOS information -- Fairchild is not precluded from relying on his opinions
13 regarding infringement by AOS of Fairchild's asserted patents.

14 **C. Fairchild's PICs Define The Minimum Scope Of Discovery**

15 AOS finally argues that "courts have imposed boundaries on discovery in patent cases that are
16 tied to the specific products accused of good faith of infringement." In support of this argument, AOS
17 cites *T-Netix, Inc. v. Global Tel*Link Corp.*, No. 2:06-cv-426 (E.D. Tex. May 23, 2007), an order in
18 which the District Court for the Eastern District of Texas, *sua sponte*, limited discovery to "discovery
19 relating to the technical operation of the accused products, as well as the identity of and technical
20 operation of any products reasonably similar to any accused product." This order does not support
21 AOS's position. Fairchild explicitly accused all of AOS's trench MOSFET products of infringement
22 by listing them in its PICs. It goes without saying that the products listed as being accused of
23 infringement in a party's PICs are, in fact, "accused products" as that phrase is used in the *T-Netix*
24 order. There is no authority supporting AOS's assertion that the scope of discovery can actually be so
25 narrow as to exclude products specifically accused of infringement and identified by part number in a
26 party's PICs.

27 **III. CONCLUSION**

28 For the foregoing reasons, Fairchild's Motion To Compel Responses To Interrogatories And

1 Production Of Documents should be granted.

2
3 DATED: November 27, 2007 TOWNSEND AND TOWNSEND AND CREW LLP

4
5 By: /s/Igor Shoiket
6 IGOR SHOIKET

7 Attorneys for Defendant and Counterclaimant
8 FAIRCHILD SEMICONDUCTOR CORPORATION

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
61219108 v1

EXHIBIT D

1 MORGAN, LEWIS & BOCKIUS LLP
Daniel Johnson, Jr. (State Bar No. 57409)
2 Brett M. Schuman (State Bar No. 189247)
Amy M. Spicer (State Bar No. 188399)
3 One Market, Spear Street Tower
San Francisco, CA 94105-1126
4 Tel: 415.442.1000
Fax: 415.442.1001
5 djjohnson@morganlewis.com
bschuman@morganlewis.com
6 aspicer@morganlewis.com

7 MORGAN, LEWIS & BOCKIUS LLP
Andrew J. Wu (State Bar No. 214442)
8 2 Palo Alto Square
3000 El Camino Real, Suite 700
9 Palo Alto, CA 94306-2122
Tel: 650.843.4000
10 Fax: 650.843.4001
awu@morganlewis.com

11 Attorneys for Plaintiffs and
12 Counterdefendants
ALPHA & OMEGA
13 SEMICONDUCTOR, INC.
ALPHA & OMEGA
14 SEMICONDUCTOR, LTD.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

19 ALPHA & OMEGA
20 SEMICONDUCTOR, INC., a
California corporation; and ALPHA &
21 OMEGA SEMICONDUCTOR, LTD., a
Bermuda corporation,

22 Plaintiffs,

23 v.

24 FAIRCHILD SEMICONDUCTOR
25 CORP., a Delaware corporation,

26 Defendant.

27 AND RELATED COUNTERCLAIMS
28

Case No. 07-2638 JSW (EDL)
(Consolidated with Case No. 07-2664 JSW)

**DECLARATION OF FRANCOIS
HEBERT IN SUPPORT OF
PLAINTIFF'S REPLY IN SUPPORT OF
ITS MOTION TO STRIKE
FAIRCHILD'S PATENT L.R. 3-1
DISCLOSURES**

Date: November 27, 2007

Time: 9:00 a.m.

Location: Courtroom E, 15th Floor

Judge: Hon. Elizabeth D. Laporte

1 I, François Hébert, declare as follows:

2 1. I am the Chief Technology Officer for Alpha & Omega Semiconductor, Inc.

3 2. My educational background includes a Bachelor's degree in Electrical Engineering
4 in 1984 from the University of Waterloo, a Master's degree in Electrical Engineering in
5 1985 from the University of Waterloo and a Ph.D in Electrical Engineering from the
6 University of Waterloo in 1988.

7 3. I have worked in the semiconductor industry for more than 20 years. I have
8 worked in the power MOSFET industry for more than 12 years, and I have extensive
9 knowledge regarding the structure, design, simulation, manufacturing, characterization
10 and performance of these devices.

11 4. I have reviewed Fairchild Corporation's Opposition to Plaintiff's Motion to Strike
12 Fairchild's Patent Local Rule 3-1 Disclosure, as well as the Declaration of Dr. Richard
13 Blanchard in support of that opposition. I may refer to those documents herein as
14 "Fairchild Opposition" and "Blanchard Declaration."

15 5. I disagree with a number of statements in the Blanchard Declaration. For example,
16 I disagree with his statement and suggestions that all of AOS's accused power MOSFET
17 products are manufactured using processes that are the same in all respects relevant to
18 Fairchild's asserted patents.

19 6. In fact, there are numerous differences among AOS's MOSFET devices. For
20 example, different AOS MOSFET products have different turn-on (threshold) voltages,
21 different gate voltage ratings (maximum V_{gs} voltage which can be applied for safe
22 operation), different drain voltage ratings (maximum V_{ds} voltage which can be applied
23 for safe operation), different maximum drain current ratings, different drain to source
24 resistance, different transconductance, different drain to source breakdown voltages
25 (BV_{dss}), different capacitances (input capacitance C_{iss} , output capacitance C_{oss} and gate-
26 drain capacitance C_{rss}), different gate resistance (R_g), different optimum operating
27 frequencies.

28 7. Many of these characteristics relate to the operating performance of the products,

2 HEBERT DECLARATION IN SUPPORT OF AOS'S REPLY
IN SUPPORT OF ITS MOTION TO STRIKE CASE NO. 07-
2638 JSW (EDL) (CONSOL. WITH CASE NO. 07-2664 JSW)

1 including, for example, the resistance of the device to breakdown.

2 8. To achieve the different performance characteristics described above, AOS's
3 MOSFET devices have different features, such as different silicon substrates (n type, p
4 type, and different doping concentrations), different drain drift regions, different doping
5 concentrations in certain regions, carrier type (n or p) and thickness, different trench
6 depth, different trench width, different distances between the trenches, different active cell
7 geometries (striped, closed-cell for example), different depths of the various doping
8 profiles (sometimes referred to as wells), and different number of steps used to fabricate
9 the devices. While not all of the features are different between every product, there
10 are certainly some differences between the products.

11 9. Power MOSFETs are configured and optimized for different applications. AOS's
12 catalog (see aosmd.com website for example), shows that the applications include for
13 example: low-frequency DC-DC power conversion, high-frequency DC-DC power
14 conversion, switch-mode-power-supplies (SMPS), SMPS low-side MOSFET, SMPS
15 high-side MOSFET, low-frequency load-switching applications, battery protection
16 applications, AC-DC power conversion, inverters, motor control, general purpose. Some
17 applications even include multiple MOSFETs in one package, or one MOSFET with one
18 passive device such as a diode. An example showing multiple applications of AOS
19 MOSFETs can be found below (from the AOS website, aosmd.com):

		ALPHA & OMEGA		MOSFET Selector Guide - All Products															
		SEMICONDUCTOR																	
Part No.	Status	Package	Configuration	Application	Diode	Block	Type	V _{DS}	V _{GS}	V _{DS}	V _{GS}	V _{DS}	V _{GS}	V _{DS}	V _{GS}	V _{DS}	V _{GS}	V _{DS}	V _{GS}
309	AOD496	New	TO-252	Single	SMPS	N	No	No		30	20	62	44	62.5	31	9.5	18		
310	AOD603	Full Production	TO-252-SL	Complementary	Inverter	N	No	No		60	20	12	12	2	1.3	60	85		
311	AOD603	Full Production	TO-252-SL	Complementary	Inverter	P	No	No		-60	20	-12	-10	2.5	1.6	115	150		
312	AOD604	Full Production	TO-252-SL	Complementary	Inverter	N	No	No		40	20	8	8	2	1.3	33	47		
313	AOD604	Full Production	TO-252-SL	Complementary	Inverter	P	No	No		-40	20	-8	-8	2.5	1.6	50	70		
314	AOD606	New	TO-252-4L	Complementary	Inverter	N	No	No		40	20	8	8	4.2	2.7	33	47		
315	AOD606	New	TO-252-4L	Complementary	Inverter	P	No	No		-40	20	-8	-8	5	3.2	50	70		
316	AOD607	New	TO-252-4L	Complementary	Inverter	N	No	No		30	20	12	12	2.1	1.3	25	34		
317	AOD607	New	TO-252-4L	Complementary	Inverter	P	No	No		-30	20	-12	-12	2.1	1.3	37	62		
318	AOD608	Full Production	TO-252-4L	Complementary	Inverter	N	Yes	No		40	20	10	10	2	1.3	39	50		
319	AOD608	Full Production	TO-252-4L	Complementary	Inverter	P	Yes	No		-40	20	-10	-10	2.5	1.8	51	75		
320	AOL452	New	TO-251A	Single	General Purpose	N	No	No		25	20	55	50			8.7	14.7		
321	AOL472	New	TO-251A	Single	General Purpose	N	No	No		25	20	50	50			5	9.5		
322	AOL1401	New	Ultra S08	Single	Battery Protection	P	Yes	No		-38	25	-19	-15	5	3	10			
323	AOL1408	Not for new designs	AOL1700	Ultra S08	Single	SMPS Low Side	N	No	No	30	20	27	22	5	3	4	6		
324	AOL1412	New	Ultra S08	Single	SMPS Low Side	N	No	Yes	SRFET	30	12	27	21	5	3	3.9	4.6		
325	AOL1413	New	Ultra S08	Single	Load Switch	P	Yes	No		-30	25	-14	-11	5	3.2	17			
326	AOL1414	Full Production	Ultra S08	Single	SMPS High Side	N	No	No		30	12	21	17	5	3	6.5	7.5		
327	AOL1419	Full Production	Ultra S08	Single	SMPS High Side	N	No	No		30	20	21	17	5	3	5.5	10.5		
328	AOL1420	Not for new designs	AOL1700	Ultra S08	Single	SMPS Low Side	N	No	No	30	20	29	23	5	3	3.7	5.5		
329	AOL1424	New	Ultra S08	Single	SMPS	N	Yes	No		30	20	24	19	5	3	5.4	8		
330	AOL1426	New	Ultra S08	Single	SMPS High Side	N	No	No		30	12	15	12	4	2.6	10.5	13.5		
331	AOL1428	New	Ultra S08	Single	SMPS High Side	N	No	No		30	20	16	14	5	3	9.5	19		
332	AOL1432	New	Ultra S08	Single	SMPS High Side	N	No	No		25	20	21	17	6	4	8.5	14		
333	AOL1438	Not for new designs	AOL1428	Ultra S08	Single	SMPS Low Side	N	No	No	25	30	20	16	5	3	11.5			
334	AOL1440	New	Ultra S08	Single	SMPS Low Side	N	No	No		25	30	25	20	5	3	5.2			
335	AOL1444	Not for new designs	AOL1700	Ultra S08	Single	SMPS Low Side	N	No	No	30	20	26	21	5	3	4.3	6.3		
336	AOL1446	Not for new designs	AOL1413	Ultra S08	Single	SMPS High Side	N	No	No	30	20	21	16	5	3	7	11		
337	AOL1454	New	Ultra S08	Single	Inverter	N	Yes	No		40	20	17	13	5	3.2	9	13		
338	AOL1700	New	Ultra S08	Single	SMPS Low Side	N	No	Yes	SRFET	30	20	26	21	5	3.2	4.2	8		
339	AOL1702	New	Ultra S08	Single	SMPS Low Side	N	No	Yes	SRFET	30	12	21	17	5	3.2	5.8	7.2		
340	AOL1704	New	Ultra S08	Single	SMPS Low Side	N	No	Yes	SRFET	30	12	18	14	4.3	2.8	7.8	9.8		
341	AOL1708	New	Ultra S08	Single	SMPS Low Side	N	No	Yes	SRFET	30	20	21	16.5	5	3.2	6.2	9.5		
342	AON3402	New	DFN 3x3	Single	General Purpose	N	Yes	No		20	12	12	9.6	3	1.9	13	17		
343	AON3406	New	DFN 3x3	Single	General Purpose	N	Yes	No		30	30	10	7.8	3	1.9	15	24		

10. Specific differences between transistors configured for different applications include, without limitation, the following examples: Devices which are switched often and under severe conditions (SMPS, DC-DC converters, etc...) require different characteristics than devices which are rarely switched. Motor-control devices (devices used in hand held battery powered tools for example), must be able to survive much harsher conditions than MOSFETs used to protect batteries of notebook computers and as a result, special techniques to clamp the breakdown voltage and protect the active cells of Power Tool MOSFETs are integrated in the structure.

11. In addition to differences between among the 14 products for which Fairchild provided analysis, there are also difference between those 14 products and the other 342 products that Fairchild accuses of infringement.

12. For example, many of the 342 products have performance characteristics not reflected among any of the 14 products. As one example, the highest R_{DS} among the 14 specifically identified products is 52 m Ω (AOD6405), while R_{DS} of the 342 products AOS products (at $V_{GS}=10V$) ranges from 3.5 m Ω (AOD438) to 1600 m Ω (AO5800E).

1 13. Similarly, while the 14 products for which Fairchild provided analysis all have the
2 same drain-source voltage of 30V, the drain-source voltage of the other members in the
3 product family ranges from 12V (AO4437) to 20V (AO6702), 30V (AO6800), 40V
4 (AO4617), 60V (AO4612), 75V (AO4850); AOD464 (105V), AOT404 (105V), and
5 AOD450 (200V).

6 14. These differences among drain-source voltages of the AOS products are driven by
7 the technical features of those products. For example, the V_{DS} as well as the R_{DS} (when
8 normalized to the area of the device) are impacted by (among other things) the relative
9 depths of a MOSFET transistor's trenches and wells.

10 15. In short, there are certainly differences among the 14 products for which Fairchild
11 has provided reverse-engineering analyses, as well as differences between those products
12 and the other products listed on the AOS selection guide. Some devices for example, have
13 a well which is shallower than the gate trenches, while other devices have wells which
14 are deeper than the gate trenches.

15 16. Finally, it is my understanding that at least some of these differences between the
16 AOS products would be shown by additional reverse engineering, such as Scanning
17 Electron Microscopy (SEMs), or Scanning Capacitance Microscopy (SCMs), or
18 Secondary Ion Mass Spectroscopy (SIMS). Among other things, such analysis would
19 indicate the relative depths of the trenches and wells in the products.

20
21 I declare under penalty of perjury under the laws of the United States that the
22 foregoing is true and correct to my personal knowledge.

23
24 Executed this 13th day of November, 2007, at Sunnyvale, California.

25
26 By 
27 François Hébert
28

5 HEBERT DECLARATION IN SUPPORT OF AOS'S REPLY
IN SUPPORT OF ITS MOTION TO STRIKE CASE NO. 07-
2638 JSW (EDL) (CONSOL. WITH CASE NO. 07-2664 JSW)